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12 RLI INSURANCE COMPANY

13  
14 UNITED STATES DISTRICT COURT  
15  
16 CENTRAL DISTRICT OF CALIFORNIA

17  
18 WESTERN DIVISION

19  
20 RLI INSURANCE COMPANY, an  
21 Illinois Corporation,

22 No. 2:23-cv-08932

23 Plaintiff,

24 COMPLAINT

25 v.

26 HOSPITAL ASSOCIATION OF  
27 SOUTHERN CALIFORNIA, a  
28 California Nonprofit Corporation;  
1 NATIONAL HEALTH FOUNDATION,  
2 a California Nonprofit Corporation; and  
3 GEORGE GREENE, an individual,

4 Defendants.

5 Plaintiff RLI Insurance Company (“RLI”) asserts the following complaint  
6 against Hospital Association of Southern California (“HASC”), National Health  
7 Foundation (“NHF”), and George Greene (“Greene”) (collectively, the “Insureds”).

8 1. This dispute relates to insurance coverage for a lawsuit filed against  
9 the Insureds, captioned *Bruno et al. v. National Health Foundation et al.*, Los  
10 Angeles Superior Court case no. 23STCV09092 (the “Underlying Action”). Each of  
11 the Insureds is a defendant in the Underlying Action.

12 2. RLI has been defending the Underlying Action, under a reservation of  
13 rights, pursuant to Non-Profit Asset Protection Policy EPG0030428, effective

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14 COMPLAINT

15 Case No. 2:23-cv-08932

1 5/18/2022 to 5/18/2023 (the “Policy”—specifically, an Employment Practices and  
2 Third Party Discrimination Liability (“EPL”) coverage section of that Policy.

3       3. Coverage is barred for the Underlying Action because the Insureds  
4 misrepresented and concealed material facts in applying for insurance under the  
5 Policy, including facts directly bearing upon the claims that have been asserted in  
6 the Underlying Action. Coverage under the policy incepted on May 18, 2022. Prior  
7 to May 18, 2022, the Insureds knew, but did not disclose to RLI, *inter alia*, that:  
8 (a) Ms. Bruno had resigned as Chief Executive Officer of NHF on April 7, 2022;  
9 (b) Ms. Cameron had resigned as Chief Strategy Officer of NHF on April 18, 2022;  
10 (c) a third female executive of NHF had also resigned on or about April 18, 2022;  
11 and (d) nine of the thirteen members of NHF’s Board of Directors had resigned  
12 between May 2 and May 3, 2022 expressing their concern, in a written, signed  
13 resignation letter, for their potential civil liability, should the executive leadership  
14 team pursue claims of harassment, retaliation and wrongful termination. The  
15 Insureds knew of not only those resignations of the female executive leadership  
16 team and of the majority of the Board of Directors, but also of the underlying facts  
17 and circumstances giving rise to those resignations, including Ms. Bruno’s and Ms.  
18 Cameron’s claims and allegations of wrongful termination. Ms. Bruno and Ms.  
19 Cameron are now the plaintiffs in the Underlying Action.

20        4. Under the terms of the Policy and California law, misrepresentation or  
21 concealment of material facts in applying for insurance stands as a bar to any claim  
22 for coverage arising from or related to matters not disclosed. Accordingly, RLI  
23 owes no duty to defend or indemnify the Insureds for the Underlying Action on this  
24 basis, while reserving all other rights under the Policy, at law and in equity.

## THE PARTIES

26       5. Plaintiff RLI is a corporation organized and existing under the laws of  
27 the State of Illinois, with its principal place of business in Peoria, Illinois. RLI is a  
28 citizen of Illinois.

6. Defendant HASC is a nonprofit public benefit corporation organized and existing under the laws of California, with its principal place of business in Los Angeles, California. HASC is a citizen of California.

7. Defendant NHF is a nonprofit public benefit corporation organized and existing under the laws of California, with its principal place of business in Los Angeles, California. NHF is a citizen of California.

8. Defendant Greene is an individual residing in Los Angeles County, and a citizen of California.

## **JURISDICTION AND VENUE**

9. The Court has original jurisdiction over the present action under 28 U.S.C. § 1332, because there exists complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000. The applicable Policy limits affected by the claims for declaratory relief are \$5 million, and the monetary claims at issue in the Underlying Action seek in excess of \$75,000. Venue is proper within this District pursuant to 28 U.S.C. §§1391(b)(1)-(2) and 1391(c)(1)-(2). All named defendants are subject to personal jurisdiction in this District, and additionally, a substantial part of the events or omissions giving rise to the claim occurred in this District.

## FACTS

10. The Insureds submitted their written Application for the RLI Policy on or about March 24, 2022. The main “Asset Protection Policy Application” form, within each of its three coverage sections, including under the heading “V. Employment Practices and Third Party Discrimination Liability Coverage Section Information”, included the following:

## PRIOR KNOWLEDGE/REPRESENTATION

**IT IS IMPORTANT THAT YOU FILL IN THE BLANK IN THIS PARAGRAPH.** No insured proposed for coverage is aware of any facts, circumstance, investigations or actions which he or she has reason to suppose might give rise to a future claim that would fall within the scope of proposed coverage, except

1 \_\_\_\_\_; or [ ] None

2 It is agreed that if such facts, circumstances, investigations or actions  
3 exist, whether or not disclosed, any claim arising from them is  
excluded from this proposed coverage.

4 11. The Insureds' response was marked "[X] None" and the blank was left  
5 unfilled.

6 12. The "Appendix" to the signed application included a series of specific  
7 questions and statements for the Insureds to respond to or acknowledge. One  
8 statement, and the Insureds' response, read:

9 **It is agreed that if such facts, circumstances, investigations or  
10 actions exist, whether or not disclosed, any claim arising from  
them is excluded from the proposed Employment Practices and  
11 Third Party Discrimination Liability Coverage.** Acknowledged.

12 13. The Insureds also submitted a completed addendum to the application  
13 as part of their submission to RLI, providing information and asking questions  
14 regarding the different requested coverage sections, including "Employment  
15 Practices and Third Party Discrimination Liability Information." In response to "No  
16 insured proposed for coverage is aware of any facts, circumstances, investigations  
17 or actions which he or she has reason to suppose might give rise to a future claim  
18 that would fall within the scope of proposed Employment Practices and Third Party  
19 Discrimination Liability", the typed response was "Not aware of any facts" under  
20 each of two columns: "HASC/CLC/AllHealth" and "NHF."

21 14. Immediately above the signature line of the Application, appeared the  
22 following language:

23 **MATERIAL CHANGE**

24 Signing of this application does not bind the Applicant or the  
25 Insurer. If there is a material change in the answers to the  
26 questions prior to the Policy inception date the Applicant will  
notify the Insurer in writing and any outstanding quotation or  
indication may be modified or withdrawn.

## 1 DECLARATION AND SIGNATURE

2 The undersigned is an authorized representative of the  
3 Applicant, and hereby certifies that he or she has made  
4 reasonable inquiries to obtain and provide the answers,  
5 information and documentation that is responsive to the  
6 questions and requests contained in this application, and  
7 represents that the answers, information and documentation is  
true, accurate and complete to the best of their knowledge and  
belief. ... [T]he undersigned agrees that this application and its  
attachments shall be the basis of the contract should a Policy be  
issued and shall be deemed attached to and shall form part of the  
Policy....

8  
9 15. The Application was signed by Scott Twomey, identified as “SVP-  
10 CFO”, on March 18, 2022.

11 16. A true and correct copy of the Application, including addenda, is  
12 attached hereto as **Exhibit 1**.

13 17. On April 7, 2022, Ms. Bruno resigned. Each Insured knew this. No  
14 Insured informed RLI. No Insured changed or amended the information provided  
15 on the Application.

16 18. On April 14, 2022, acting in reliance upon the Insureds’ original  
17 Application, RLI issued a Quote for the requested coverage, including EPL  
18 coverage. In the Quote Letter, RLI stated:

19 Further, these terms are strictly conditioned upon there being no  
20 material change in the risk between the date of this letter and the  
21 inception date of the proposed policy. If we determine such material  
change has occurred, we reserve the right to modify the terms, up to  
and including withdrawal of the terms.

22 19. RLI’s April 14, 2022 Quote Letter enclosed a specimen policy form,  
23 which included the following language (also contained within the actual Policy  
24 when it was thereafter issued):

### 25 A. Representations

26 The Insureds represent and acknowledge that the statements and  
27 information contained in the Application are true and complete, are the  
28 basis of this Policy and are to be considered as incorporated into and  
constituting a part of this Policy. This Policy is issued in reliance upon  
the truth and completeness of such representations.

1           20. RLI's April 14, 2022 Quote Letter enclosed a specimen policy form,  
 2 which included the following language (also contained within the actual Policy  
 3 when it was thereafter issued):

4           The Insureds represent and acknowledge that the statements and  
 5 information contained in the Application are true and complete, are the  
 6 basis of this Policy and are to be considered as incorporated into and  
 7 constituting a part of this Policy. This Policy is issued in reliance upon  
 8 the truth and completeness of such representations.

9           21. On April 18, 2022, Ms. Cameron resigned, and on or about that same  
 10 date or within two days thereafter, another female executive of NHF also resigned.  
 11 Each Insured knew of the resignations. No Insured informed RLI. No Insured  
 12 changed or amended the information provided on the Application.

13           22. On or about April 21, 2022, Ms. Cameron executed a severance  
 14 agreement, agreeing to release all claims in exchange for \$82,400.11; but on May 1,  
 15 2022, NHF allegedly reversed the direct deposit of the payment that had been made  
 16 and renounced the severance agreement as allegedly unauthorized.

17           23. On or about May 2 and May 3, 2022, nine of the thirteen members of  
 18 the NHF Board of Directors signed a letter of resignation, including a stated  
 19 concern for their own civil liability, should the executive leadership team pursue  
 20 claims of harassment, retaliation and wrongful termination. Each Insured knew of  
 21 the mass resignation and the letter. No Insured informed RLI. No Insured changed  
 22 or amended the information provided on the Application.

23           24. On May 17, 2022, the Insureds accepted RLI's April 14, 2022 Quote,  
 24 and requested from RLI that coverage be bound. Later that same day, RLI bound  
 25 coverage for the Policy, with an effective date of May 18, 2022. The Insureds and  
 26 RLI exchanged a number of communications between the date of the original  
 27 Application and the effective date of the Policy. At no time in any of those  
 28 communications or otherwise did the Insureds disclose the adverse facts and  
 29 circumstances that had occurred, involving the executive leadership team, Ms.  
 30 Bruno, Ms. Cameron, and/or the Board of Directors, nor did the Insureds correct or

1 amend the information that had been provided on the Application.

2 25. A true and correct, certified copy of the Policy is attached hereto as

3 **Exhibit 2.**

4 26. On or about May 26, 2022, Cameron made a written demand for  
5 monetary payment and demanded certain records from and evidence preservation  
6 by the Insureds. The Insureds did not notify RLI of the Claim.

7 27. On April 24, 2023, Ms. Bruno and Ms. Cameron filed the Underlying  
8 Action. A true and correct copy of the Complaint is attached hereto as **Exhibit 3.**

9 28. On April 28, 2023, the Insureds forwarded the Complaint to RLI,  
10 constituting their first notice to RLI of any of the facts or circumstances regarding  
11 the allegations of Ms. Bruno and Ms. Cameron.

12 29. On May 25, 2023, RLI agreed to participate in the defense of the  
13 Underlying Action, subject to a reservation of rights. RLI agreed to defend HASC  
14 and NHF on a primary basis, as insureds under the Policy (subject to the  
15 Retention); and RLI acknowledged the insured status of Mr. Greene as a “leased  
16 employee,” excess to the coverage being afforded under a policy that another  
17 insurer had issued in favor of his actual, direct employer, California Association of  
18 Hospitals and Health Systems (“CAAHS”). On October 3, 2023, RLI issued a  
19 supplemental reservation of rights letter.

20 30. RLI has reserved all rights with respect to each of its Insureds, under  
21 the Policy, at law and in equity, including but not limited to the rights to seek  
22 reimbursement for all sums expended by RLI on the defense of or indemnification  
23 for uncovered claims.

24 **FIRST CLAIM FOR RELIEF**

25 **(No Duty to Defend – Common Law Misrepresentation or Concealment)**

26 31. RLI re-alleges and incorporates herein by reference all previous  
27 paragraphs of this complaint, as though fully set forth herein.

28 32. California Insurance Code § 332 provides: “Each party to a contract of

1 insurance shall communicate to the other, in good faith, all facts within his  
 2 knowledge which are or which he believes to be material to the contract and as to  
 3 which he makes no warranty, and which the other has not the means of  
 4 ascertaining.” Section 330 defines “concealment” to mean “Neglect to  
 5 communicate that which a party knows, and ought to communicate.” Section 356  
 6 provides that “completion of the contract of insurance is the time to which a  
 7 representation must be presumed to refer.” Under sections 331, 338, and 359,  
 8 concealment, failure to disclose, or misrepresentation of material facts support  
 9 rescission of an insurance contract. As an alternative to rescission, an insurer may  
 10 also raise the concealment, nondisclosure or misrepresentation by the insured as a  
 11 defense against any claim or suit under the Policy.

12       33. The Insureds breached their statutory duty to RLI in conjunction with  
 13 their application for the Policy, by misrepresenting that they were aware of no facts  
 14 or circumstances that might give rise to a future claim, and by concealing their  
 15 awareness of the resignations of Ms. Bruno, Ms. Cameron, a third female executive,  
 16 and nine of the thirteen members of NHF’s Board of Directors, including  
 17 allegations and asserted claims for gender-based discrimination, harassment,  
 18 retaliation and wrongful termination.

19       34. The facts that were misrepresented, not disclosed and concealed were  
 20 material to the risk being underwritten by RLI, particularly, the EPL coverage.

21       35. RLI reasonably relied on its Insureds to honestly and fully disclose all  
 22 material information known to them and relevant to the risk insured.

23       36. RLI contends that the Insureds’ misrepresentations, non-disclosure  
 24 and/or concealment operate to bar coverage, including any duty to defend the  
 25 Underlying Action under the Policy. The Insureds disagree, and dispute that  
 26 contention.

27       37. By virtue of the foregoing, there exists a present, justiciable  
 28 controversy between RLI and the Insureds.

1       38. RLI requests a declaration of the parties' rights and obligations, to wit,  
2 a Declaratory Judgment that RLI owes no duty to defend any and all of the Insureds  
3 in the Underlying Action under the Policy, because of the misrepresentations, non-  
4 disclosure and concealment in the application process.

## SECOND CLAIM FOR RELIEF

## **(No Duty to Indemnify – Common Law Misrepresentation or Concealment)**

7       39. RLI re-alleges and incorporates herein by reference all previous  
8 paragraphs of this complaint, as though fully set forth herein.

9       40. California Insurance Code § 332 provides: “Each party to a contract of  
10 insurance shall communicate to the other, in good faith, all facts within his  
11 knowledge which are or which he believes to be material to the contract and as to  
12 which he makes no warranty, and which the other has not the means of  
13 ascertaining.” Section 330 defines “concealment” to mean “Neglect to  
14 communicate that which a party knows, and ought to communicate.” Section 356  
15 provides that “completion of the contract of insurance is the time to which a  
16 representation must be presumed to refer.” Under sections 331, 338, and 359,  
17 concealment, failure to disclose, or misrepresentation of material facts support  
18 rescission of an insurance contract. As an alternative to rescission, an insurer may  
19 also raise the concealment, nondisclosure or misrepresentation as a defense against  
20 any claim or suit under the Policy.

21       41. The Insureds breached their statutory duty to RLI in conjunction with  
22 their application for the Policy, by misrepresenting that they were aware of no facts  
23 or circumstances that might give rise to a future claim, and by concealing their  
24 awareness of the resignations of Ms. Bruno, Ms. Cameron, a third female executive,  
25 and nine of the thirteen members of NHF's Board of Directors, including  
26 allegations and asserted claims for gender-based discrimination, harassment,  
27 retaliation and wrongful termination.

28 42. The facts that were misrepresented, not disclosed and concealed were

1 material to the risk being underwritten by RLI, particularly, the EPL coverage.

2 43. RLI reasonably relied on its Insureds to honestly and fully disclose all  
3 material information known to them and relevant to the risk insured.

4 44. RLI contends that the Insureds' misrepresentations, non-disclosure  
5 and/or concealment operate to bar coverage, including any duty to indemnify the  
6 Insureds for any judgment or settlement that may be entered in the Underlying  
7 Action, under the Policy. The Insureds disagree, and dispute that contention.

8 45. By virtue of the foregoing, there exists a present, justiciable  
9 controversy between RLI and the Insureds.

10 46. RLI requests a declaration of the parties' rights and obligations, to wit,  
11 a Declaratory Judgment that RLI owes no duty to indemnify any and all of the  
12 Insureds for any judgment or settlement in the Underlying Action, under the Policy,  
13 because of the misrepresentations, non-disclosure and concealment in the  
14 application process.

15 **THIRD CLAIM FOR RELIEF**

16 **(No Duty to Defend – Contract Defenses, Misrepresentation and Concealment)**

17 47. RLI re-alleges and incorporates herein by reference all previous  
18 paragraphs of this complaint, as though fully set forth herein.

19 48. In addition to the statutory and common law defenses, RLI's Policy  
20 contains contractual defenses to coverage in the event of misrepresentations and  
21 concealment by an Insured.

22 49. Section IX.A Representations provides: "The Insureds represent and  
23 acknowledge that the statements and information contained in the Application are  
24 true and complete, are the basis of this Policy and are considered as incorporated  
25 into and constituting a part of this Policy. This Policy is issued in reliance upon the  
26 truth and completeness of such representations." "Application" is a defined term,  
27 meaning "the signed, written application for this Policy or any coverage section of  
28 this Policy, .... Including all document and materials attached to or submitted with

1 or incorporated into such application(s). All such application(s), documents,  
 2 materials and filings are deemed attached to and incorporated into this Coverage  
 3 Section.”

4 50. One clause from the Application that is incorporated by reference into  
 5 the Policy, the “Prior Knowledge/ Representation” provision quoted at Paragraph  
 6 no. 9, above, provides that “if such facts, circumstances, investigations or actions  
 7 exist,” that an Insured is aware of in applying for the insurance, then “whether or  
 8 not disclosed, any claim arising from them is excluded from this proposed  
 9 coverage.” This clause operates as an exclusion to the Policy and bars any potential  
 10 for coverage for the Underlying Action.

11 51. Another clause from the Application that is incorporated by reference  
 12 into the Policy, quoted at Paragraph no. 11, above, provides the Insured’s  
 13 acknowledgement that “if such facts, circumstances, investigations or actions exist,  
 14 whether or not disclosed, any claim arising from them is excluded from the  
 15 Employment Practices and Third Party Discrimination Liability Coverage.” This  
 16 clause operates as an exclusion to the Policy and bars any potential for coverage for  
 17 the Underlying Action.

18 52. Section IX.B Severability provides:

19 The Application shall be construed as a separate application for  
 20 coverage by each of the Insureds. If with respect to any coverage  
 21 section the Application contains any misrepresentation or  
 22 omission which materially affects either the acceptance of the  
 23 risk or the hazard assumed by the Insurer under such coverage  
 24 section, then the Insurer shall not be liable under such coverage  
 25 section to pay any Loss on account of, and shall not be obligated  
 26 to defend, any Claim based upon, arising out of or attributable to  
 27 the facts that were not accurately and completely disclosed in the  
 28 Application to the extent such Loss is incurred by:

1. any Entity as indemnification of an Insured Person who knew the facts that were not truthfully disclosed in the Application; or
2. any Entity and its Subsidiaries and Insured Plans if an Executive Officer of such Entity knew the facts that were not truthfully disclosed in the Application; whether or not such Executive Officer or Insured Person knew the

1 Application contained such misrepresentation or  
 2 omission. No knowledge of one Insured Person shall be  
 3 imputed to any other Insured Person for purposes of this  
 4 Section IX.

5 53. Because Mr. Greene as an “Insured Person” and as an “Executive  
 6 Officer” of both NHF and HASC knew the facts that were not truthfully disclosed  
 7 in the Application, or at any point before the Policy incepted, Section IX.B  
 8 separately operates to bar coverage. Mr. Twomey, who signed the Application, was  
 9 also an “Executive Officer” and knew the facts that were not truthfully disclosed.

10 54. For each of the foregoing reasons, RLI contends that the Policy  
 11 provisions bar any potential for coverage and thus that it owes no duty to defend  
 12 any or all of the Insureds against the Underlying Actions. The Insureds disagree and  
 13 dispute that contention.

14 55. By virtue of the foregoing, there exists a present, justiciable  
 15 controversy between RLI and the Insureds.

16 56. RLI requests a declaration of the parties’ rights and obligations, to wit,  
 17 a Declaratory Judgment that RLI owes no duty to defend any and all of the Insureds  
 18 against the Underlying Action, under the Policy, because of the misrepresentations,  
 19 non-disclosure and concealment in the application process.

#### 19 **FOURTH CLAIM FOR RELIEF**

##### 20 **(No Duty to Indemnify – Contract Defenses, Misrepresentation and 21 Concealment)**

22 57. RLI re-alleges and incorporates herein by reference all previous  
 23 paragraphs of this complaint, as though fully set forth herein.

24 58. In addition to the statutory and common law defenses, RLI’s Policy  
 25 contains contractual defenses to coverage in the event of misrepresentations and  
 26 concealment by an Insured.

27 59. Section IX.A Representations provides: “The Insureds represent and  
 28 acknowledge that the statements and information contained in the Application are

1 true and complete, are the basis of this Policy and are considered as incorporated  
 2 into and constituting a part of this Policy. This Policy is issued in reliance upon the  
 3 truth and completeness of such representations.” “Application” is a defined term,  
 4 meaning “the signed, written application for this Policy or any coverage section of  
 5 this Policy, .... Including all document and materials attached to or submitted with  
 6 or incorporated into such application(s). All such application(s), documents,  
 7 materials and filings are deemed attached to and incorporated into this Coverage  
 8 Section.”

9       60. One clause from the Application that is incorporated by reference into  
 10 the Policy, the “Prior Knowledge/ Representation” provision quoted at Paragraph  
 11 no. 9, above, provides that “if such facts, circumstances, investigations or actions  
 12 exist,” that an Insured is aware of in applying for the insurance, then “whether or  
 13 not disclosed, any claim arising from them is excluded from this proposed  
 14 coverage.” This clause operates as an exclusion to the Policy and bars any coverage  
 15 for the Underlying Action.

16       61. Another clause from the Application that is incorporated by reference  
 17 into the Policy, quoted at Paragraph no. 11, above, provides the Insured’s  
 18 acknowledgement that “if such facts, circumstances, investigations or actions exist,  
 19 whether or not disclosed, any claim arising from them is excluded from the  
 20 Employment Practices and Third Party Discrimination Liability Coverage.” This  
 21 clause operates as an exclusion to the Policy and bars any coverage for the  
 22 Underlying Action.

23       62. Section IX.B Severability provides:

24       The Application shall be construed as a separate application for  
 25 coverage by each of the Insureds. If with respect to any coverage  
 26 section the Application contains any misrepresentation or  
 27 omission which materially affects either the acceptance of the  
 28 risk or the hazard assumed by the Insurer under such coverage  
 section, then the Insurer shall not be liable under such coverage  
 section to pay any Loss on account of, and shall not be obligated  
 to defend, any Claim based upon, arising out of or attributable to  
 the facts that were not accurately and completely disclosed in the

1 Application to the extent such Loss is incurred by:

2 1. any Entity as indemnification of an Insured Person who  
3 knew the facts that were not truthfully disclosed in the  
Application; or

4 2. any Entity and its Subsidiaries and Insured Plans if an  
5 Executive Officer of such Entity knew the facts that were  
6 not truthfully disclosed in the Application; whether or not  
7 such Executive Officer or Insured Person knew the  
Application contained such misrepresentation or  
omission. No knowledge of one Insured Person shall be  
imputed to any other Insured Person for purposes of this  
Section IX.

8  
9 63. Because Mr. Greene as an “Insured Person” and as an “Executive  
10 Officer” of both NHF and HASC knew the facts that were not truthfully disclosed  
11 in the Application, or at any point before the Policy incepted, Section IX.B  
12 separately operates to bar coverage. Mr. Twomey, who signed the Application, was  
13 also an “Executive Officer” of HASC and of NHF and knew the facts that were not  
14 truthfully disclosed.

15 64. For each of the foregoing reasons, RLI contends that the Policy  
16 provisions bar coverage and thus that it owes no duty to indemnify any or all of the  
17 Insureds against the Underlying Actions. The Insureds disagree and dispute that  
18 contention.

19 65. By virtue of the foregoing, there exists a present, justiciable  
20 controversy between RLI and the Insureds.

21 66. RLI requests a declaration of the parties’ rights and obligations, to wit,  
22 a Declaratory Judgment that RLI owes no duty to indemnify any and all of the  
23 Insureds for any judgment or settlement entered in the Underlying Action, under the  
24 Policy, because of the misrepresentations, non-disclosure and concealment in the  
25 application process.

26 **FIFTH CLAIM FOR RELIEF**

27 **(Declaratory Judgment – Other Contractual Defenses)**

28 67. RLI re-alleges and incorporates herein by reference all previous

1 paragraphs of this complaint, as though fully set forth herein.

2 68. RLI's defense and investigation of the Underlying Action has been  
 3 conducted under a full reservation of rights.

4 69. The Policy contains three distinct Coverage Sections: A. Management  
 5 and Entity Liability; B. Employment Practices and Third Party Discrimination  
 6 Liability; and C. Fiduciary Liability.

7 70. Section A, Management and Entity Liability, is inapplicable to the  
 8 Underlying Action, and the Insureds have asserted no claim under that coverage  
 9 section.

10 71. Section C, Fiduciary Liability, is inapplicable to the Underlying  
 11 Action, and the Insureds have asserted no claim under that coverage section.

12 72. The Insuring Clause of the EPL Coverage Section provides that RLI  
 13 "will pay on behalf of the Insureds, Loss incurred by the Insureds as a result of  
 14 Claims first made against the Insureds during the Policy Period ... by or on behalf  
 15 of a past, present, prospective or alleged Employee for a Wrongful Employment  
 16 Act." "Loss" is a defined term that generally means "monetary amounts the  
 17 Insureds are legally obligated to pay as a result of a covered Claim," as defined  
 18 therein, and exempting from the definition certain remedies, including: "(ii)  
 19 severance pay or damages determined to be owing under an express contract of  
 20 employment or an express obligation to make such payments in the event of  
 21 termination of employment...; (vi) salary, wages, commissions, bonuses, non-  
 22 deferred cash incentive compensation, Stock Benefits or other compensation if  
 23 actually or allegedly earned by the claimant in the court of employment...; (viii)  
 24 other matters uninsurable pursuant to the law under which this Coverage Section  
 25 shall be construed, except as otherwise provided above."

26 73. Coverage is barred for some of the claims alleged in the Underlying  
 27 Action, to the extent they do not fall within the Insuring Clause of the EPL  
 28 Coverage Section, including its definition of Loss. Specifically, the Underlying

1 Action's 9<sup>th</sup> and 10<sup>th</sup> causes of action are premised on Ms. Cameron's claims for  
2 severance pay and thus are not within the definition of covered "Loss"; and all  
3 claims for exemplary and punitive damages are uninsurable as a matter of  
4 California public policy. California is the only state with a connection to the  
5 Underlying Action or the Insureds. Any damages awarded for the Underlying  
6 Action's 2<sup>nd</sup> cause of action (retaliation) or 8<sup>th</sup> cause of action (intentional infliction  
7 of emotional distress) are also uninsurable pursuant to California law and public  
8 policy, including Insurance Code Section 533, and coverage is denied on that basis.

9       74. There exists a present, justiciable controversy between RLI and the  
10 Insureds regarding the extent of coverage owed, if any, under the Policy, for the  
11 claims asserted in the Underlying Action.

12        75. RLI requests a declaration of the parties' rights and obligations, to wit,  
13 a Declaratory Judgment that RLI owes no duty to indemnify any and all of the  
14 Insureds for any judgment or settlement entered in the Underlying Action, to the  
15 extent that the claims or damages are not covered under the Policy and/or are  
16 uninsurable as against California public policy.

## **SIXTH CLAIM FOR RELIEF**

## **(RECOUPMENT OF AMOUNTS PAID ON UNCOVERED CLAIMS)**

19        76. RLI re-alleges and incorporates herein by reference all previous  
20 paragraphs of this complaint, as though fully set forth herein.

21        77. RLI has provided a defense in the Underlying Action under a full  
22 reservation of rights, including the right to claim recoupment of all sums expended  
23 by it on the defense of, or indemnification for, uncovered claims.

24        78. RLI has incurred sums on the defense of the Underlying Action, for  
25 which it in fact owes no potential coverage and thus no duty to defend.

26        79. RLI is entitled to and hereby seeks the recoupment of all sums that are  
27 or will be expended by RLI toward the defense of the Underlying Action, in whole  
28 or in part, to the extent that such sums were expended on the defense of uncovered

1 claims. In the event, and to the extent that, RLI were to pay any amounts for  
2 indemnity, RLI is also entitled to, and would seek, the recoupment of those sums  
3 also, in whole or in part, in an amount to be proven at trial.

4 **PRAYER FOR RELIEF**

5 Wherefore, RLI Insurance Company respectfully prays for relief as follows:

6 1. On its First Claim for Relief, a declaratory judgment that RLI owes no  
7 duty to defend the Insureds in the Underlying Action;

8 2. On its Second Claim for Relief, a declaratory judgment that RLI owes no  
9 duty to indemnify the Insureds for the Underlying Action;

10 3. On its Third Claim for Relief, a declaratory judgment that RLI owes no  
11 duty to defend the Insureds in the Underlying Action;

12 4. On its Fourth Claim for Relief, a declaratory judgment that RLI owes no  
13 duty to indemnify the Insureds for the Underlying Action;

14 5. On its Fifth Claim for Relief, a declaratory judgment that RLI owes no  
15 duty to indemnify the Insured for the Underlying Action;

16 6. On its Sixth Claim for Relief: for monetary damages, in an amount to  
17 be proven at trial, reflecting all sums expended by RLI on the defense or settlement  
18 of uncovered claims;

19 7. For costs of suit, to the extent permitted by law; and

20 8. For such other and further relief as the Court may deem just and  
21 proper.

22 Dated: October 23, 2023

PROUGH LAW, APC

23  
24  
25 By: /s/ Michael D. Prough  
Michael D. Prough

26  
27 Attorneys for Plaintiff  
28 RLI Insurance Company